

METROPOLITAN AREA PLANNING COMMISSION

WORKSHOP MINUTES

December 19, 2003

The workshop for the Wichita-Sedgwick County Metropolitan Area Planning Commission was held at 10:00a.m. on Thursday, December 19, 2003 at Warren Cabin, 9119 E 95th Street So., Derby, Kansas. The following members were present: Ron Marnell, Chair; Bud Hentzen; Bill Johnson; Ray Warren; James Barfield; David Wells; Elizabeth Bishop; Ed Sunquist; M.S. Mitchell; Bob Hernandez; and Morris Dunlap. Frank Garofalo, John McKay, and Kerry Coulter were not present. Staff members present were: John Schlegel, Director of Planning; Dale Miller, Current Plans Supervisor; Jamsheed Mehta, Transportation Supervisor; Nalini Johnson, Principal Planner in Advanced Plans Division; Mike Hampel, Assistant to the Director; and Dave Barber, Land Use Supervisor. Also in attendance were Carol Bloodworth, Wess Galyon, Lynne Miller, Larry Ross, and Eldon Miller

1. What kind of Comprehensive Plan does the MAPC want to have?

BARBER Reviewed the discussions of the Advance Plans Committee concerning the update of the Land Use Guide Map and Development Guide Map. He emphasized the change to a functional land use approach.

MARNELL Noted that Urban Mixed Use is a key component; the definitions for each land use will be important. He also reviewed implications of the Far West Side Commercial Development Policy.

BISHOP Questioned the tweaking of the west side commercial development policy and its impact on neighborhoods. She encouraged more pedestrian friendly development.

MARNELL Indicated there was not much support in this part of the country for that type of development.

DUNLAP Used the Coleman Middle School problem with sidewalks in a subdivision as an example where pedestrian friendly development had caused a controversy. He acknowledged that individual meetings with stakeholders concerning the Comprehensive Plan could be valuable, but questioned whether they were effective.

MARNELL Recommended minor adjustments to the Comprehensive Plan.

HENTZEN Stated the general public was disrespectful to MAPC members during the last public hearings to update the Comprehensive Plan. He felt only minor changes were needed to update the Comprehensive Plan.

MITCHELL Reviewed the Redevelopment Incentives Task Force recommendations and wondered why carry this over to the Comprehensive Plan.

BARFIELD Stated that the Comprehensive Plan needed to be pro-active to keep neighborhoods from becoming blighted.

BISHOP Recommended the importance of gateways to function as entryways in the design of neighborhoods.

DUNLAP The Midtown Plan should be included in the Comprehensive Plan. Efficient transportation is important to Wichitans, and we should include neighborhood plans in the Comprehensive Plan.

MARNELL Expressed concern about the Delano Neighborhood Plan and its implications of "overreaching" in some areas.

MITCHELL Noted that there is not sufficient funding in the CIP for the McAdams & Midtown Plans.

SCHLEGEL Action plans should be included in neighborhoods plans and in the CIP.

WARREN Felt the Delano Plan is exclusionary; he used the Spangles denial as an example.

MITCHELL Should the downtown arena be in the Comprehensive Plan? That is “pie-in-the-sky” thinking.

HENTZEN Are there cost estimates for neighborhoods plan?

JOHNSON Indicated that departments included costs and goal revisions for the Midtown Plan.

MARNELL Stated that neighborhood plans do not include looking at the city as a whole. Used 13th Street and Broadway as an example for lack of City Council district representation.

JOHNSON Reviewed controversial projects, e.g., Target on W. Maple, Home Depot at Oliver and K-96.

BARFIELD Cited Wal-Mart at 21st and Rock Rd. as an example of a controversial case.

WARREN Stated that general conditions in the Comprehensive Plan would be better than specific conditions.

SCHELEGEL Who is the audience for the Comprehensive Plan?

WARREN Does not know.

MITCHELL Land use professionals feel the Comprehensive Plan has outgrown the intent of the state legislation.

BISHOP Comprehensive Plan should include how do you want your community to look. Citizens want preservation of open space and farmland included in the Comprehensive Plan.

MARNELL Requested earlier presentations to Metropolitan Area Planning Commission for neighborhood plans.

WARREN Subdivision regulations and zoning code need to be tweaked by the Advance Plans Committee.

HERNANDEZ Audience should be general public, rather than specific interests.

MARNELL Concerning preservation of land, keep in mind property rights.

2. **What are the MAPC’s priorities for the Metropolitan Area Planning Department?**

BISHOP Be pro-active with small communities.

BARFIELD Expansion of the 200-foot notification rule is needed.

MITCHELL Notification is developed in planning statutes; limited to definite impact.

BARFIELD Noted that cell towers have more impact than the 200-foot rule allows.

WARREN There is already too much scrutiny on cell towers.

MARNELL Kreines was a poor consultant to use for our cell towers policy.

SCHLEGEL He recently reviewed Wireless Master Plan with the City Council. The industry view is the network is in place; they need to fill-in spots. Cell tower requests are not minimal height requests. Cell tower height depends on technology and bandwidth.

MARNELL Tower heights are going to be coming down. They operate on a frequency reuse basis. Tall towers can work against the industry.

DUNLAP USD 259 ignores the Metropolitan Area Planning Commission. They erected cell towers without MAPC review and without regard to Comprehensive Plan.

MITCHELL MAPC needs more reports on activities taken as a result of approved neighborhood plans, Transportation Plan, etc.

BISHOP MAPD needs to reinstate the 3-month calendar.

SUNQUIST Stressed the importance of alternative sewer systems.

SCHLEGEL More discussion is needed between applicants and the Water and Sewer Departments.

MITCHELL Developers paying for infrastructure extensions is difficult.

BISHOP General community likes the “Neighborhoods Planning News” publication, APA audio conferences, and MAPD brownbag sessions. Educational opportunities need to continue to be a priority for Metropolitan Area Planning Commission.

DUNLAP Recommended removing the MAPC meetings from the 10th floor of City Hall.

MARNELL Felt that relocating the meetings is a “feel good” issue, but does not accomplish anything.

BARFIELD Recommended that MAPD be selective about which meetings are moved, especially the controversial items.

MARNELL Stated the meetings should only be moved for policy issues, not controversial items.

WARREN State there was no consensus on Metropolitan Area Planning Commission to change meeting location.

HENTZEN Let Wichita City Council hold evening meetings, not Metropolitan Area Planning Commission.

3. **Subdivision regulation matters**

- a. Discuss takings and exactions (City and County attorneys).
- b. Briefing on the draft County Subdivision Policy (Metropolitan Area Planning Department).

WARREN Distributed Access Management Policy. Noted rights-of-way requirement on page 2 of the policy. Who pays for it?

PARNACOTT and LANG They presented takings and dedications issues with a PowerPoint presentation. They also provided paper copies of PowerPoint to workshop attendees.

WARREN Metropolitan Area Planning Commission has some limited police powers over private property rights.

DUNLAP Referred to page 3 of the handout. He questioned who determines just compensation for a takings under the 5th Amendment to the Constitution.

LANG Appraisers are used for eminent domain. He used the 10-foot dedication for an arterial expansion as an example.

HENTZEN As a County Commissioner or MAPC member, he could not recall being advised whenever there is a taking. Are these included in the CIP, and are they determined whether they are a taking or not?

PARNACOTT Nexus is a factor in eminent domain.

LANG Reviewed the City's arterial street policy. In requiring dedications, he stressed it is truly how far you can go. Developers and the City normally work out the right-of-way dedication requirements.

MARNELL Used the Central and Hillside MAPC case as an example of taking right-of-way to obtain a building permit. This was an equity issue, not a legal issue.

LANG Fairness is an issue, but building setbacks are also required for future street expansion.

MITCHELL Recommended a mapped street plan as a condition for land use change.

LANG This will happen soon with the Northwest Bypass; there will be compensation at some point.

WARREN Is it okay to regulate intersections by requiring 12.5% of the costs for a traffic signal from developers?

LANG This depends on economics and other factors related to the intersection.

BISHOP Referred to page 10 of the PowerPoint handout. For the Subdivision Committee, does Public Works ask for dedication of street right-of-way?

PARANCOTT This is historical information and not from a Kansas case. There has to be some sort of reasonable nexus.

MARNELL Referred to page 14 of the handout. He asked questions about zoning and its relation to a regulatory takings.

PARANACOTT The importance is not denying property owners the use of their property.

LANG For any takings issue, so much comes down to fairness and common sense.

MARNELL Referred to page 16 of the handout. He questioned the elapse of time on the Central and Hillside case and the 1 lot problem. Was this settled by fairness or legal?

PARANCOTT The Court decided that there was a lack of time.

MARNELL Referred to caveats for takings on page 18 of the handout. Should the court have allowed a taking from one lot and not from the other fourteen lots? Does the physical taking of property apply to our zoning regulations?

LANG In the **Dolan** case, most dedications are based on reasons required for development. Some are allowed and some are denied. Further discussion with MAPD and Traffic Engineering staff about the arterial street policy would be helpful.

MARNELL There needs to be a high standard to avoid outright extortion related to takings. Developers negotiate with MAPD staff and it will cost them more at a later date.

WARREN Suggested referencing the Access Management Policy in the Subdivision Regulations.

MILLER Stated the Access Management Policy has been adopted by the Wichita City Council and Board of County Commission.

WARREN This policy circumvents the reasonable analogy upheld by the courts.

PARNACOTT There is a Kansas Supreme Court case from Topeka that addresses ingress/egress.

WARREN Traffic Engineering requires land for a dedication before a building permit will be issued.

DUNLAP John, can some screening be done before dedications come to Metropolitan Area Planning Commission?

SCHLEGEL Deferred to attorneys.

LANG Felt that one needs to look at the policies and guidelines.

SCHLEGEL Stated that dedications are not handled on a case-by-case basis. We might have to work out something with the Law Department and Traffic Engineering concerning arbitrary dedication conditions to ensure their legality.

MITCHELL Stated there should be a checklist for subdivision regulation; anything outside these regulations should be noted.

BARFIELD If there are developers that are in conflict with a MAPD recommendation, there is no reason for them to be intimidated by staff requirements. He cited Spangles on Seneca as an example.

MARNELL Felt that applicants want due consideration for changes recommended by MAPD staff. They should be provided with written rationale for the changes.

HENTZEN Stated that MAPD staff needs to be more customer friendly.

MARNELL Felt that MAPC should not be there for developers only.

MITCHELL Kansas has a takings case. **Hudson** is the case.

LANG **Hudson** is a 1950's case; it is not cited much by the courts anymore.

DUNLAP Requested clarification about comments during MAPC meetings. Should MAPC comments come before or after the motion?

BARFIELD Used plats as an example for this clarification.

LANG Stated that MAPC comments add to the debate and should come prior to the motion.

MARNELL On a close vote (8-6 as an example), comments are needed from both sides.

BISHOP When there is discussion prior to a motion, the MAPC can craft better motions.

HENTZEN MAPC members should be allowed to negotiate with agents at the podium.

DUNLAP He referred to the Holland Community Unit Plan (Kellogg & Tyler Rd.). The MAPC acted as a mediator for negotiations between the agent and the neighborhood. These types of cases should be deferred and let them settle their differences.

MARNELL Felt that applicants should receive their staff reports electronically. They should then provide the list of conditions they are in disagreement with the MAPD staff and any other proposed revisions to the staff report.

WARREN It would be helpful to have the differences between MAPD staff and the applicant and any proposed recommendations from the applicant.

MILLER Used CUP's as an example. The applicant can change their mind on a CUP from Friday to Monday.

SCHLEGEL Applicants receive the staff report on Monday, prior to the MAPC meeting. They can provide their revisions to the MAPC at the Thursday meeting.

WARREN MAPD staff should try to negotiate differences with applicants prior to the MAPC meeting. The final judgment rests with the MAPC.

MARNELL MAPD could E-mail their staff reports to agents and let them propose revisions.

4. **Zoning Ordinance matters.**

a. Community Unit Plan (CUP) and Protective Overlay (PO)

WARREN CUP's are tailored to certain conditions and they are ill defined in our regulations. They function as a restrictive covenant. He was opposed to CUP's as a condition of approval, either proposed or mandated. Allowing CUP's is not good law because they are subjective. Architectural controls are a problem. CUP's should be only voluntary.

MARNELL Referred to CUP's associated with zone changes. The exceptions in these CUP's take a lot of the controversy out of the case for the MAPC.

WARREN CUP's were originally suggested and then later they became a mandate as a requirement for permitting.

MILLER Applicants develop a CUP, and they are submitted on the normal filing dates. If there is anything unique, MAPD staff tries to work it out with the applicant.

WARREN Are CUP's strictly voluntary for applicant by the MAPD?

MILLER The general parameters for a CUP are in the Unified Zoning Code. Commercial zoning over 6 acres under unified overlay's require a CUP.

BISHOP Not overwhelmingly in favor of architectural controls, but they generally work in favor of developers. An example is the Home Depot in Olathe.

WARREN Not opposed to CUP's.

DUNLAP Why does MAPD staff only refer to the Sign Code and not have sign restrictions included in the CUP's?

MARNELL The common architectural controls enhance commercial developments.

HENTZEN CUP'S work well. When there are vocal neighborhoods, the recommendations from MAPD staff will lean towards them. He cited Wilson Estates Medical Park as an example; MAPD recommendations included brick crosswalks, building height restrictions, and increased landscaping.

SCHLEGEL To enhance the approval process, the MAPC does not review Administrative Adjustments, and they are allowed in the Unified Zoning Code.

5. **Planning Commission conduct.**

LANG Reviewed handouts concerning open meetings law, government ethics, and conflicts of interest.

DUNLAP Are the Subdivision and Advance Plans Committees an open meeting?

LANG Yes.

Adjournment at 4:15p.m.